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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services	Rulemaking 12-12-011 (Filed December 20, 2012)

JOINT MOTION OF UBER TECHNOLOGIES, INC., RASIER-CA, LLC, UBER-USA, LLC, AND UATC, LLC FOR STAY OF DECISION 18-04-005

Vidhya Prabhakaran
Patrick Ferguson
Nathan Rouse
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Email: vidhyaprabhakaran@dwt.com
Email: patrickferguson@dwt.com
Email: nathanrouse@dwt.com

Attorneys for Uber Technologies, Inc., Rasier-CA, LLC, Uber-USA, LLC, and UATC, LLC

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FOR STAY OF DECISION 18-04-005

Pursuant to Rules 11.1 and 16.1 of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure and California Public Utilities Code § 1735, Uber Technologies, Inc. ("UTI"), Rasier-CA, LLC ("Rasier-CA"), Uber-USA, LLC ("Uber USA"), and UATC, LLC ("UATC") file this Joint Motion for Stay ("Motion") of *Decision on Phase III.B. Tracks II And IV Issues: Is Uber Technologies, Inc., A Transportation Network Company and/or a Charter Party Carrier*, Decision ("D.") 18-04-005, issued on May 4, 2018 (the "Decision"), pending resolution of the same parties' Application for Rehearing of the Decision ("Application for Rehearing"), which will be filed on or before June 1, 2018.

I. INTRODUCTION

In the Decision, the Commission characterizes for the first time UTI as a Transportation Network Company ("TNC") and a Transportation Charter Party Carrier ("TCP"). The Decision directly contradicts the Commission's prior rulings and strays far beyond the scope of this quasi-legislative proceeding to order UTI to pay up to three years of back-fees into the Public Utilities Commission Transportation Reimbursement Account ("PUCTRA fees").

UTI and its subsidiaries will file an Application for Rehearing that asks the Commission to grant rehearing to correct a number of serious flaws in the Decision's findings, logic, and purported legal authority. Specifically, UTI and its subsidiaries will ask that the Commission grant rehearing of the Decision for the three reasons summarized below.

A. The Decision Incorrectly Determines that UTI is a TNC.

The Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, and abused its discretion when it concluded that UTI is a TNC under the plain meaning of Public Utilities Code § 5431. The Commission bases its statutory interpretation on a misreading of the plain language meaning of the word "provide" transportation services.[1] Because UTI does not provide lead generation and payment collecting services to the independent driver-partners who provide transportation to riders using the Uber App, UTI does not engage in transportation services under California law. The Commission already regulates UTI's subsidiary, Rasier-CA, as a TNC that provides these lead generation and payment collecting services, and the record does not support the conclusion that regulating Rasier-CA is insufficient.

The Commission also misapplies the legal doctrine of alter-ego liability in finding that UTI is a TNC based on the operations of its subsidiary, Rasier-CA. The doctrine exists for the limited purpose of holding a corporate entity responsible for the debts or liabilities of a separate subsidiary, not to allow an agency to broaden its regulatory powers, and especially not where the agency already regulates the subsidiary in full. Under California's alter-ego standard, UTI cannot be considered an alter-ego of Rasier-CA because: (1) the relationship between UTI and Rasier-CA does not involve a unity of interest and ownership so pervasive as to destroy their separate corporate personalities, and (2) setting aside the corporate forms is not necessary to

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[1] Pub. Util. Code § 5431(c) ("'Transportation network company' means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.").

prevent an inequitable result.[2]

Finally, to the extent the Commission's Decision purports to require UTI to pay PUCTRA fees back to 2013 that the Commission has already collected from Rasier-CA, the Decision contradicts the plain meaning of the PUCTRA fees statute.

B. The Decision Incorrectly Determines that UTI is a TCP.

The Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, and abused its discretion when it concluded that UTI is a TCP under the plain meaning of Public Utilities Code § 5360. The Commission misinterprets the plain language meaning of the phrase to be "engaged in" transportation services under the statutory definition of a TCP.[3] If the Commission's broad interpretation of "engaged in" were to prevail, a vast range of companies that do not provide transportation services could be considered TCPs. Moreover, the drivers to whom Uber USA licenses the Uber App are already regulated as TCPs, and there is no record that such regulation is insufficient. UTI and Uber USA have previously advised the Commission that the most appropriate entity to regulate as a TCP, if any, would be Uber USA.

The Commission similarly erred when it misapplied the alter-ego doctrine to reach the conclusion that UTI is a TCP based on the operations of its subsidiaries, Uber USA and UATC.[4]

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[2] *See Doney v. TRW, Inc.,* 33 Cal. App. 4th 245, 249 (1995) (quoting *Mesler v. Bragg Mgmt. Co.,* 39 Cal. 3d 290, 301 (1985)).

[3] Pub. Util. Code § 5360 ("…'charter-party carrier of passengers' means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. 'Charter-party carrier of passengers' includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver.").

[4] Uber USA is the UTI subsidiary that licenses the Uber App directly to driver-partners who engage in transportation services (and who are also TCP permit holders). UATC is the UTI subsidiary that engages in an entirely different line of business focused on developing autonomous vehicles and self-driving technology.

Under California's alter-ego standard, UTI cannot be considered an alter-ego of its subsidiaries because: (1) neither the relationship between UTI and Uber USA nor the relationship between UTI and UATC involves a unity of interest and ownership so pervasive as to destroy their separate corporate personalities, and (2) setting aside the corporate forms is not necessary to prevent an inequitable result.[5] Moreover, the Commission acknowledges in the Decision that the alter-ego doctrine is concerned with the question of whether a corporate entity is liable for a particular action to prevent an *injustice,* not simply a means by which a regulatory authority can extend its jurisdiction to unregulated parent companies.

Lastly, the Commission's order that UTI pay PUCTRA back-fees is unlawful because the Commission should have already collected those fees from the TCP permit holders. Requiring UTI to now also pay those same fees, or, alternatively, penalizing it for any TCP's failure to pay PUCTRA fees, contradicts the plain meaning of the PUCTRA fees statute, and is fundamentally unfair.

C. It Was Improper for the Commission to Order UTI to Pay PUCTRA Back-Fees in the Context of a Quasi-Legislative Proceeding.

The Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, made unsupported findings, abused its discretion, and violated UTI's rights to due process under the United States and California Constitutions by straying outside of the established scope of this quasi-legislative proceeding to order that UTI pay fines and back-fees.[6]

The Commission's decision to order UTI to pay PUCTRA back-fees as both a TNC and TCP is outside the scope of this proceeding, is a violation of the CPUC's own Rules of Practice

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[5] *See Doney v. TRW, Inc.,* 33 Cal. App. 4th 245, 249 (1995) (quoting *Mesler v. Bragg Mgmt. Co.,* 39 Cal. 3d 290, 301 (1985)).

[6] Pub. Util. Code. § 1757(a)(1)-(5).

and Procedure and the Public Utilities Code, and is a violation of UTI's rights to due process under the United States and California Constitutions. Courts have previously overturned Commission decisions in similar situations where the Commission has failed to proceed in a manner required by law by making decisions that went beyond the scope of issues identified in the scoping memo set for a proceeding.[7]

II.

GOOD CAUSE EXISTS TO STAY THE EFFECTIVENESS OF THE DECISION

Rule 16.1(b) of the CPUC's Rules of Practice and Procedure provides that "[f]iling of an application for rehearing shall not excuse compliance with an order or a decision."[8] Similarly, Public Utilities Code Section 1735 provides:

> An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, <u>except in such cases and upon such terms as the commission by order directs</u>.[9]

Thus, the instant motion is necessary to request a stay to the effectiveness of the Decision pending the Commission's decision on the Application for Rehearing that UTI and its subsidiaries will be filing.

The CPUC generally considers the following factors when determining whether to grant a stay: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits; and (3) a balance of the harm to the moving party (or the public interest) if the stay is not granted and the decision is later

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[7] *S. Cal. Edison Co. v. Pub. Utils. Comm'n*., 140 Cal. App. 4th 1085, 1106 (2006).

[8] CPUC Rules of Practice and Procedure, Rule 16.1.

[9] Pub. Util. Code § 1735 (emphasis added).

reversed, against the harm to other parties (or the public interest) if the stay is granted and the decision is later affirmed.[10]

Based on these factors, good cause exists to grant this Motion to stay the effectiveness of the Decision.

First, UTI and its subsidiaries will suffer serious and irreparable harm if the Commission does not grant a stay of the Decision. The Decision fails to account for the significant negative operational consequences that will result from requiring UTI to register as both a TNC and TCP. For instance, the Decision fails to recognize that Raiser-CA, not UTI: (a) requests background check reports to ensure compliance with background check requirements for TNC drivers; (b) engages with the California Department of Motor Vehicles to enroll TNC driver-partners in the Employer Pull Notice program; and (c) holds the operating agreements for TNC services at all major California airports. The Decision could be interpreted to require UTI to establish duplicative contractual arrangements as Raiser-CA, which would negatively impact TNC operations in California by causing drivers to lose significant earning opportunities, lead to millions of dollars in unnecessary and additional operational costs, and burden other stakeholders and agencies like the DMV and airports.

Second, UTI and its subsidiaries should prevail on the merits of their Application for Rehearing. As explained above in Section I, and as will be detailed in the forthcoming Application for Rehearing, in finding that UTI is a TNC and TCP and ordering UTI to pay PUCTRA back-fees, the Commission has exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, abused its discretion, and violated UTI and its subsidiaries' rights to due process. The Commission's improper use of

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[10] *See* D.08-04-044, mimeo at 3; D.07-08-034, mimeo at 4.

the alter-ego doctrine to attempt to regulate UTI is a clear violation of California law and precedent. Similarly, the Commission's decision to order the payment of PUCTRA back-fees without any notice and in the context of a quasi-legislative proceeding is a violation of the Commission's own rules, the Public Utilities Code, and the United States and California Constitutions.

Third, the balance of harms weighs in favor of the Commission granting a stay of the Decision pending resolution of the Application for Rehearing. The Decision does not provide any justification for why there is a pressing, time-sensitive need to begin regulating UTI as a TNC or TCP. In fact, the record lacks any support for the Commission's conclusion that an inequitable result will occur unless UTI and Rasier-CA are both regulated as TNCs. Similarly, the Decision fails to identify any reason for seeking immediate payment of PUCTRA back-fees from UTI. Even assuming that the Commission had the authority to order that UTI pay PUCTRA back-fees in this circumstance (and it does not), there would be no back-fees owed because (1) Raiser-CA has already paid PUCTRA fees associated with its TNC operations, and (2) the driver-partners that provide TCP services using the Uber App have presumably directly paid PUCTRA fees for their TCP operations.

While there is no compelling reason for the Commission to immediately implement the Decision pending resolution of the Application for Rehearing, UTI and its subsidiaries as well as various third parties (*e.g.*, driver-partners, insurance providers, California airports) could suffer significant harm (both financially and operationally) if the Commission refuses to enter a stay. Finally, there would be no harm in delaying the implementation of the Decision. To the extent the Commission ultimately denies UTI's Application for Rehearing and its Decision is affirmed, UTI and its affiliates could then comply with the Decision at that time.

III. CONCLUSION

For the foregoing reasons, the Commission should stay the effectiveness of the Decision pending resolution of the Application for Rehearing.

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/s/
Vidhya Prabhakaran
Patrick Ferguson
Nathan Rouse
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Email: vidhyaprabhakaran@dwt.com
Email: patrickferguson@dwt.com
Email: nathanrouse@dwt.com

Attorneys for Uber Technologies, Inc., Rasier-CA, LLC, Uber-USA, LLC, and UATC, LLC